No. 80-1136

IN THE

Supreme Court of the United States

October Term, 1980

WILLIAM H. DRUMMOND,

Petitioner,

v.

LOUIS A. STAHL and MARY K. STAHL, Husband and Wife, and STREICH, LANG, WEEKS, CARDON & FRENCH A Professional Association,

Respondents.

On Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Attorneys for Respondents

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This is a petition for writ of certiorari from a decision in the state court that there is an absolute privilege to file charges of unethical conduct with the appropriate state bar committee. The petition should be denied.

1. There is a sizable fact element in this case. Petitioner asserts that the charges filed were concededly groundless and concededly malicious. The court below noted, page 5 of Petition, that the bar investigator found the complaint to "have been brought in good faith" and that "reasonable

minds . . . could differ as to whether there existed an ethical breach." The court below found that the parallel trial court motion "was privileged under the facts of this case." *Ibid.*

2. We are cited to nothing indicating a division of authority on any federal question. There is division of authority on state questions of privilege, but not on the federal question.

3. We are cited to no case from any jurisdiction which even remotely suggests that recognition of a privilege presents a federal question. For the state's authority to "define for themselves" the privileges which preclude liability in this context, see *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 347 (1974).

The court below probably rightly decided that there was more good in allowing free filings of complaints against lawyers than in inhibiting them. Whether it was correct or not, this was purely a state question to decide.

Respectfully submitted,
LEWIS AND ROCA

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February, 1981.

CERTIFICATE OF SERVICE

STATE OF ARIZONA)
) ss.
County of Maricopa)

JOHN P. FRANK, being first duly sworn, upon his oath deposes and says that he is a member of the Bar of this Court and one of the counsel of record for respondents in this cause, that on this 4th day of February, 1981, he mailed three copies of the Brief in Opposition to Petition for Writ of Certiorari in this cause by depositing the same in the United States mail, first class postage paid, to:

Donald R. Kunz
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012

and that he also then mailed 40 copies of the Brief in Opposition to Petition for Writ of Certiorari to the Clerk of this Court in compliance with Supreme Court Rule 28.

_____
JOHN P. FRANK

SUBSCRIBED AND SWORN TO before me this 4th day of February, 1981.

_____
Notary Public

My Commission Expires:

_____